

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEANNE MARIE STOUGHTON, individually
and as personal representative of the ESTATE
OF JOSHUA RANDOLPH PETTY, deceased,

Plaintiff,

v.

CLALLAM COUNTY,

Defendant.

Case No. C08-5283RJB

ORDER DENYING
DEFENDANT'S RULE 12(b)(1)
MOTION TO DISMISS AND
GRANTING DEFENDANT'S
MOTION TO CONSOLIDATE
CASES

This matter comes before the Court on Defendant's Rule 12(b)(1) Motion to Dismiss. Dkt. 4. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

PROCEDURAL AND FACTUAL BACKGROUND

As an initial matter, it is important to note that Plaintiff has filed two separate complaints against Defendant and both of those actions are before this Court. The actions were initially filed in Clallam County Superior Court and Defendant has removed both to federal court. As discussed below, Plaintiff asserts that multiple filings were necessary to avoid dismissal of her claims under the federal statute of limitations and under the state administrative requirements.

On March 7, 2008, Plaintiff filed a complaint in Clallam County Superior Court alleging violations of 42 U.S.C §§ 1983, 1988. *Stoughton v. Clallam County*, Western District of Washington Case No. C08-

1 5178RJB, Dkt. 1 at 7-11 ("First Complaint"). Plaintiff based her causes of action on injuries that arose
2 from the death of her son, Joshua Randolph Petty, on March 10, 2005. *Id.* ¶9. On March 25, 2008, the
3 action was removed to this Court. *Id.*

4 On April 22, 2008, Plaintiff filed another complaint in Clallam County Superior Court alleging
5 violations of 42 U.S.C §§ 1983, 1988, RCW 4.20.010, .020, .046, and .060. *Stoughton v. Clallam*
6 *County*, Western District of Washington Case No. C08-5283RJB, Dkt. 1 at 4-9 ("Second Complaint").
7 The facts in this complaint are identical to those that were set forth in the First Complaint. On May 2,
8 2008, this action was also removed from state court and subsequently assigned to this Court as a related
9 case to the action explained above. *Id.*

10 On May 2, 2008, Defendant filed a Rule 12(b)(1) Motion to Dismiss Plaintiff's [Second] complaint.
11 Dkt. 4. Defendant argues that Plaintiff's Second Complaint is essentially an Amended First Complaint. *Id.*
12 at 5. Defendant states that Plaintiff had to file her First Complaint before the 3-year federal statute of
13 limitations would have expired on March 10, 2008. *Id.* at 3-4. Plaintiff, however, was barred from
14 asserting state law causes of action in the First Complaint due to state law provisions that require
15 administrative claims and waiting periods before an action can commence against the state. *Id.* at 4-5.
16 Defendant essentially argues that Plaintiff attempted to comply with the federal statute of limitations by
17 filing the First Complaint and then attempted to comply with the mandatory state waiting period by filing
18 the Second Complaint, which included identical federal claims and newly asserted state law claims. *Id.*

19 On May 21, 2008, Plaintiff responded. Dkt. 9. On May 30, Defendant replied. Dkt. 12. This
20 motion is now ripe for decision.

21 22 DISCUSSION

23 Defendant has moved the Court to dismiss Plaintiff's Second Complaint in its entirety. Dkt. 4 at 7.
24 Defendant argues that the federal claims in Plaintiff's Second Complaint are improperly before the Court
25 because the claims are identical to those that are raised in Plaintiff's First Complaint. *Id.* at 1. Defendant
26 also argues that Plaintiff's state law claims should be dismissed because of Plaintiff's failure to comply with
27 state administrative procedures and Plaintiff's failure to comply with certain state law provisions at the time
28 of filing the First Complaint. *Id.*

1 In the alternative, Defendant asks that the Court dismiss the federal claims in Plaintiff's Second
2 Complaint and then consolidate the two actions before the Court. *Id.* at 7. The Court has subject-matter
3 jurisdiction over the action because of the federal claims asserted in the Second Complaint. *See* Second
4 Complaint. Therefore, the Court should deny Defendant's Rule 12(b)(1) Motion to Dismiss Plaintiff's
5 [Second] complaint.

6 Under Fed. R. Civ. Pro. 42, if actions before the court involve common questions of law or fact,
7 the court may consolidate the actions. Fed. R. Civ. Pro. 42(a)(2). The two actions before this Court
8 involve common questions of law and common questions of fact. Therefore, the Court should grant
9 Defendant's Motion to Consolidate these actions.

10 Finally, the Court will entertain a motion to strike redundant material should the circumstances
11 warrant that, and, if any claims are not timely, the Court will also consider appropriate motions on that
12 subject.

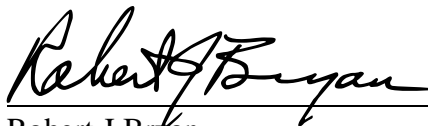
13
14 ORDER

15 Therefore, it is hereby

16 **ORDERED** that Defendant's Rule 12(b)(1) Motion to Dismiss (Dkt. 4) is **DENIED**. Defendant's
17 Motion to Consolidate action C08-5178RJB and action C08-5283RJB is **GRANTED**. All further
18 documents regarding these cases shall be filed in *Stoughton v. Clallam County*, Western District of
19 Washington Case No. C08-5178RJB.

20 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
21 party appearing *pro se* at said party's last known address.

22
23 DATED this 2nd day of June, 2008.

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26 Robert J Bryan
27 United States District Judge
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